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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. ROOSEVELT CAIN, Defendant and Appellant.	E059464 (Super.Ct.No. FVI1301499) OPINION

APPEAL from the Superior Court of San Bernardino County. Jules E. Fleuret, Judge. Affirmed.

Mark D. Johnson, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Roosevelt Cain appeals after he pleaded guilty to a charge of attempted arson (Pen. Code, §§ 664, 451). Ten days after pleading guilty,

defendant orally asked to withdraw his plea. The trial court denied the request as untimely. Defendant has appealed. We affirm the judgment.

FACTS AND PROCEDURAL HISTORY

In May of 2013, during an argument with his wife, defendant got his gun, pointed it at her, and clicked it. Defendant laughed and said, "[B----], you're dead." Then, defendant put some of his wife's clothes in the bathtub and set them on fire. Defendant's wife tried to put out the fire; defendant came back with some bleach and poured it over the burning clothes and over his wife. As defendant's wife tried to rinse the bleach off her face and out of her eyes in the bathroom sink, defendant was grabbing her and fighting with her. He grabbed and broke the chains she wore around her neck. He hit her, and she swung back. Defendant's wife called 911, and defendant tried to snatch the phone from her.

Defendant was charged with one count of assault with a firearm (Pen. Code, § 245, subd. (a)(2)), with an enhancement for personal use of a firearm (Pen. Code, § 12022.5, subds. (a) & (d)), one count of vandalism causing over $400 in damage to clothes and jewelry (Pen. Code, § 594, subd.(b)(1)), one count of making criminal threats (Pen. Code, § 422) with an attendant armed allegation (Pen. Code, § 12022.5, subds. (a) & (d)), and one count of arson (Pen. Code, § 451, subd. (d)). Defendant was held to answer on all charges and allegations.

Jury trial was set for July 29, 2013, and a pretrial conference for July 12, 2013. On the pretrial hearing date, defendant entered into a plea agreement, under which he agreed to plead no contest to a related charge of attempted arson in count 4, with

dismissal of counts 1, 2 and 3. Defendant requested immediate sentencing; he received the agreed upon sentence of 18 months in state prison (one-half the upper term of three years for a violation of Pen. Code, § 451, subd. (d)). Defendant was awarded presentence credit for 53 days of actual custody and 53 days of conduct credits, for a total of 106 days.

Ten days after his plea, defendant and his attorney again appeared in court. Defendant's counsel explained that defendant wished to withdraw his plea, on the representation that defendant had been adversely affected by medication on the day of his plea, and that he did not understand the nature and circumstances of his no contest plea. Counsel also stated that he had explained to defendant that a motion to withdraw the plea would be allowed after entry of plea and before pronouncement of judgment, or within 180 days after being granted probation. In defendant's case, he was not granted probation, and judgment had already been pronounced. Therefore, although counsel could file a notice of appeal for defendant, there was no avenue by which to pursue a motion to withdraw the plea. The court ruled that it had no jurisdiction to consider a motion to withdraw defendant's plea.

Defense counsel duly filed a notice of appeal on August 16, 2013. The notice of appeal explained defendant's desire to withdraw the plea, which he had communicated to counsel the day after he had entered his plea and been sentenced. The notice of appeal stated, "The court stated that the motion to withdraw plea was untimely as the defendant had already been sentenced. The defendant appeals this decision." The trial court denied defendant's request for a certificate of probable cause. On August 28, 2013, defendant

filed an amended notice of appeal. Instead of designating a ground for appeal that required a certificate of probable cause, defendant stated the appeal was based on the sentence or other matters occurring after the plea.

ANALYSIS

This court has appointed counsel to represent defendant on appeal. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493], setting forth a brief statement of the facts and a statement of the case. Appointed counsel has identified two possible arguable issues: whether the trial court erred in denying defendant's oral request to withdraw his plea, and whether the sentence imposed by the court conformed to the plea agreement.

Defendant has been afforded an opportunity to file a personal supplemental brief to bring to the court's attention any issues he wishes to argue. Defendant has not filed such a brief. Under the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have examined the entire record and find no arguable issues.

A defendant may move to withdraw a plea for good cause, before the entry of judgment. The burden of proof necessary to establish the good cause standard in a prejudgment motion to withdraw a guilty plea pursuant to Penal Code section 1018, is by clear and convincing evidence. (*People v. Nance* (1991) 1 Cal.App.4th 1453, 1456 [Fourth Dist, Div Two].) Here, defendant failed to move to withdraw his plea until after judgment. Penal Code section 1018, however, does not provide authority for a trial court to grant a motion to withdraw the plea, because that statute only authorizes a trial court to

allow a defendant to withdraw a guilty plea before judgment is entered. (*People v. Gari* (2011) 199 Cal.App.4th 510, 521.)

The sentence imposed by the court was the same as agreed in the plea bargain: an attempted arson is punished by one-half the term for arson. The range of sentences for arson is 16 months, two years, or three years. The trial court selected the aggravated term of three years, halved to 18 months for attempted arson. This punishment was expressly contemplated on the face of the plea agreement.

No arguable issues on appeal are presented.

DISPOSITION

The judgment is affirmed.

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McKINSTER
J.

We concur:

HOLLENHORST
Acting P. J.

KING
J.